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IN THE
COURT OF APPEALS OF INDIANA

VINCENT EDWARD PRICE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A05-0509-CR-520
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Jerome Jacobi, Judge
Cause No. 10D01-0404-FB-54

September 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Vincent Price was convicted of burglary and of being an habitual offender. We find any error in the admission of a hearsay statement was harmless and there was sufficient evidence to support both convictions. We accordingly affirm.

FACTS

On March 13, 2004, Henry Campbell and Guy Smith drove to the home of Henry's daughter, Melissa Campbell. A red car, still running, was parked next to the house. Price walked out the back door of the house and got into the car. Smith told Price to "just hold it, we was going to call the law." (Tr. at 228.) Price left, and Campbell and Smith called the police.

Campbell gave police a detailed description of Price and the license number of the red car. The car belonged to Price's sister and she had loaned it to Price. Price's picture was placed in a photo array, and both Campbell and Smith identified him. Smith identified Price at trial.

Melissa testified some dumbbells were missing from her set and items inside her house had been moved. She testified a "trash [can was] sitting next to the door and it had the remote control cars in it, with the remote, and the stereo, and my speakers where they were sitting next to the counter . . ." (*Id.* at 271.)

DISCUSSION AND DECISION

1. Testimony of Henry Campbell

Henry Campbell was not available at trial due to health reasons. Price argues the trial court erred when it allowed police officers to tell the jury what Campbell had said to them.

The admission or exclusion of evidence is a matter left to the sound discretion of the trial court, and we will reverse only when there is abuse of that discretion. *B.K.C. v. State*, 781 N.E.2d 1157, 1162 (Ind. Ct. App. 2003). When reviewing a trial court's decision under an abuse of discretion standard, we will affirm if there is any evidence supporting the decision. *Id*. Moreover, a claim of error in the admission of evidence will not prevail on appeal "unless a substantial right of the party is affected." *Id*. In determining whether error in the introduction of evidence affected an appellant's substantial rights, we assess the probable impact of the evidence on the fact finder. *Id*.

The State offers no argument the challenged evidence was properly admitted; rather, it argues only that any error in its admission is harmless.

We agree. Evidence admitted in error may not require reversal if the error is harmless. *Henson v. State*, 790 N.E.2d 524, 534 (Ind. Ct. App. 2003), *trans. denied* 804 N.E.2d 750 (Ind. 2003). Error is harmless "when the conviction is supported by substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood the questioned evidence contributed to the conviction." *Id.* (quoting *Bocko v. State*, 769 N.E.2d 658, 665 (Ind. Ct. App. 2002), *reh'g denied*, *trans. denied* 783 N.E.2d 702 (Ind. 2002)). Error is also harmless when the erroneously admitted testimony is "merely cumulative of other evidence before the trier of fact." *Purvis v. State*, 829 N.E.2d 572, 585 (Ind. Ct. App. 2005), *trans. denied* 841 N.E.2d 180 (Ind. 2005).

Smith identified Price, both in a photo array and at trial, as the man who came out the back door of Melissa's house. He testified he was close enough to Price that "[i]f I

reached out, I could have touched him." (Tr. at 229.) Given Smith's identification of Price and his testimony at trial, Campbell's statements were cumulative and their admission, if error, was harmless.

2. Sufficiency of the Evidence

In order to prove Price committed burglary as a Class B felony, the State had to prove that he broke and entered the house with the intent to commit theft. Ind. Code § 35-43-2-1. Theft is committed when a person knowingly or intentionally exerts unauthorized control over the property of another person, with the intent to deprive the other person of any part of its value or use. Ind. Code § 35-43-4-2(a). Price contends the State did not prove breaking and entering or that he intended to commit theft.

Smith testified he saw Price come out of the house. Smith did not testify he saw Price inside the house, but his testimony he saw Price leave it is sufficient to support the inference Price was inside. Melissa testified her doors were locked when she left the house and when she returned a door had been kicked in. She also testified she had placed butter knives in two doors to secure them and the knives were found lying on a freezer. This testimony supports an inference Price broke into the house. Melissa's testimony that some items were missing and other items were moved near the back door is sufficient to support Price's conviction. That evidence indicates the items were being gathered near the back door with the intent to remove them.

The State was not obliged to find Price with the goods in his hands in order to prove his intent to take the items. *See, e.g., Smith v. State*, 671 N.E.2d 910, 912-13 (Ind. Ct. App. 1996) (requisite intent to commit a felony can be inferred from the conduct of

the individual inside the premises). There was ample evidence to support Price's conviction of burglary as a Class B felony.

3. Habitual Offender Conviction

A person is an habitual offender if the State proves beyond a reasonable doubt that the person has accumulated two prior unrelated felony convictions. Ind. Code § 35-50-2-8. Prior felonies are "unrelated" if the commission of the second felony is subsequent to the sentencing for the first, and the sentencing for the second felony preceded the commission of the current felony. *Id.* Price argues the State did not prove he had been convicted of two prior unrelated felonies.

The State relied on three prior felony convictions in Nebraska and two in Kentucky.[1] Price challenges the certification of the Nebraska records as "generic" (Br. of Appellant at 9) and lacking sufficient information to show Price was the same individual referred to in those records. Certified copies of judgments or commitments containing a defendant's name or a similar name may be introduced to prove the commission of prior felonies. *Tyson v. State*, 766 N.E.2d 715, 718 (Ind. 2002). There must be supporting evidence to identify the defendant as the person named in the documents, but the evidence may be circumstantial. *Id.* If the evidence yields logical and reasonable inferences from which the finder of fact may determine beyond a reasonable doubt that it is the defendant who was convicted of the prior felony, then a sufficient connection has been shown. *Id*.

[1] Price does not challenge the Kentucky convictions, but the State concedes they count as only one prior conviction because Price was sentenced under both indictments at the same time.

In *Tyson*, to prove Tyson had been convicted of operating while intoxicated, the State offered into evidence the information, plea agreement, and the minutes of the court for the guilty plea. The documents carried a consistent cause number for this offense and the name the offender and other identifying information matched Tyson. That was sufficient evidence Tyson had been convicted of two separate and unrelated felonies. *Id*.

The State offered records from Nebraska showing Vincent E. Price had entered a plea of guilty to "Robbery – FII,"[2] (App. at 175), and was sentenced January 19, 1995. The exhibit includes a fingerprint card indicating Price's date of birth, February 23, 1969, the same birth date indicated for Price on the Kentucky documents. It also includes a Certificate of Discharge from Parole indicating a commitment date of January 19, 1995 and the same offender number as that found on Price's fingerprint card. This exhibit and the Kentucky records of felonies committed July 27 and August 3 of 1998 amount to ample evidence Price had been convicted of two separate and unrelated felonies.

Affirmed.

SULLIVAN, J., and BAKER, J., concur.

[2] In Nebraska, robbery is a Class II felony. Neb. Rev. Stat. § 28-324(2).